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2014 IL App (3d) 120079-U

Order filed January 13, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

LESLIE FERNANDEZ,) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
Plaintiff-Appellee,) Will County, Illinois,
)
v.) Appeal Nos. 3-12-0079 and 3-12-0350
) Circuit No. 09-L-363
)
AMPARO FERNANDEZ,) Honorable
) Barbara N. Petrunaro and
Defendant-Appellant.) M. Thomas Carney,
) Judges, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Lytton and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not have jurisdiction to modify the parties' settlement agreement and conduct proceedings on the plaintiff's citation to discover assets. Therefore, we vacate the trial court's modification of the settlement agreement and its ruling allowing the plaintiff to file a motion to turn over assets.

¶ 2 The defendant, Amparo Fernandez, appeals from the trial court's order modifying the settlement agreement she entered with the plaintiff, Leslie Fernandez, and the court's rulings on the plaintiff's citation to discover assets. On appeal, the defendant argues that the trial court did

not have jurisdiction to reopen the case and could not unilaterally modify the terms of the settlement agreement. We agree with the defendant; therefore, we vacate the trial court's orders.

¶ 3

FACTS

¶ 4 On January 5, 2009, the plaintiff filed a complaint alleging fraud, misrepresentation, and conversion in the DuPage County circuit court. The complaint specifically alleged that the defendant was the plaintiff's mother. In August 1999, in case No. 97-L-2433, the trial court ordered the establishment of a minor's estate to manage the plaintiff's portion of funds received as a result of a settlement agreement. The defendant and the plaintiff's father were named as guardians. In October 2007, when the guardians were discharged, the minor's estate was valued at approximately \$265,118. Before the guardians were discharged, the defendant caused the plaintiff to open a joint bank account. The defendant allegedly took over \$159,000 from the account for her own use.

¶ 5 On May 1, 2009, the case was transferred to the Will County circuit court.

¶ 6 On October 8, 2010, the trial court entered an agreed order of dismissal. The order indicated that the parties had entered into a "Settlement Agreement, Release and Covenant Not to Sue" (Agreement). The Agreement stated that the parties would secure an agreed final order dismissing the litigation with prejudice and provided a repayment schedule for the debt the defendant owed to the plaintiff. The defendant's promise to pay was secured by a second mortgage on a property located in Hammond, Indiana. In the event of a default, and if the equity in the Hammond property was less than \$80,000, the defendant had 30 days to satisfy the outstanding balance with a cash payment. If 30 days passed from the date of default without payment, then a second trust deed/note would immediately execute and be recorded against any

other property the defendant had an interest in. Upon final payment, the plaintiff was directed to execute the necessary release of mortgage on the Hammond property.

¶ 7 Paragraph 11 provided "[t]he terms of this Agreement cannot be modified or changed in any way except by a written document signed by all Parties." The agreement also stated that the parties agreed that the Will County circuit court and Judge Petrungaro "shall retain jurisdiction to enforce the terms of [the] Agreement including the obligations for payment under [the] Agreement without the necessity for filing a new cause of action to enforce its terms."

¶ 8 The order stated that the underlying complaint and counterclaim were dismissed with prejudice and that the order was intended "by the [c]ourt and all the parties to be, a FINAL AND APPEALABLE ORDER." The order did not specifically retain jurisdiction to enforce the agreement. The agreement was not appended to the order or made a part of the record at that time.

¶ 9 On November 22, 2011, the plaintiff made a telephone motion asking the court to hold the defendant in indirect civil contempt. On December 1, 2011, the plaintiff filed a citation to discover assets. The citation directed the defendant to appear before Judge M. Thomas Carney. On the same date, Judge Petrungaro issued a rule to show cause on the plaintiff's motion to hold the defendant in contempt.

¶ 10 Following a December 19, 2011, hearing on the rule to show cause, Judge Petrungaro: (1) entered a judgment against the defendant for the outstanding balance of \$43,000 due under the Agreement; (2) declined to hold the defendant in contempt of court for nonpayment; (3) ordered the defendant to immediately execute an installment note and trust deed/second mortgage on a property located on Wild Timothy Road, Naperville; (4) established a repayment plan; and (5)

ordered the defendant to place the Hammond, Indiana, and Ottawa, Illinois, rental properties for sale until the outstanding balance was satisfied. The defendant filed a notice of appeal.

¶ 11 On March 5, 2012, the plaintiff filed a petition for indirect civil contempt of court alleging that the defendant had refused to comply with Judge Petrungaro's December 19, 2011, order and failed to perfect a stay of enforcement pending her appeal. On March 16, 2012, the defendant filed an unopposed motion to supplement the record with the Agreement. Judge Petrungaro granted the motion.

¶ 12 On April 12, 2012, Judge Carney continued the hearing on the plaintiff's citation to discover assets and granted the plaintiff leave to file a motion for turnover of assets. On April 30, 2012, the defendant filed a notice of appeal. Both appeals were consolidated by this court.

¶ 13 ANALYSIS

¶ 14 On appeal, the defendant challenges Judge Petrungaro's December 19, 2011, order modifying the Agreement and Judge Carney's April 12, 2012, ruling on the citation to discover assets. The defendant argues that the trial court did not have jurisdiction to reopen the case because it was dismissed with prejudice on October 8, 2010, and became a final judgment when 30 days elapsed without either party filing a notice of appeal.

¶ 15 Initially, we note that the plaintiff has not filed an appellee's brief. However, the record is simple, and we find that the defendant's claimed errors can easily be decided without the aid of the plaintiff's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). Therefore, we review the merits of the appeal.

¶ 16 The determination of whether a trial court has jurisdiction is a question of law subject to

de novo review. *Scheider v. Ackerman*, 369 Ill. App. 3d 943 (2006).

¶ 17 Absent a timely filed postjudgment motion, a trial court loses jurisdiction over a case 30 days after the entry of a final judgment. *Holwell v. Zenith Electronics Corp.*, 334 Ill. App. 3d 917 (2002). After the expiration of the 30-day period, the trial court lacks jurisdiction to amend, modify, or vacate its judgment subject to a few exceptions. *Id.* One such exception permits a trial court to retain jurisdiction to enforce the terms of its judgment. *Id.* For example, a trial court may retain jurisdiction to enforce a settlement agreement, after an agreed dismissal, where its dismissal order specifically retains jurisdiction to enforce the underlying agreement. See *Directors of Insurance v. A and A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d 721, 725 (2008) (although a written settlement agreement was not filed with the court, the trial court retained jurisdiction to enforce the settlement agreement where the dismissal order expressly stated " 'the [c]ourt retains jurisdiction to enforce said agreement' ").

¶ 18 In the instant case, on October 8, 2010, the trial court dismissed the parties' case pursuant to a settlement agreement. The dismissal order stated that it was a final and appealable order, but did not specifically retain jurisdiction to enforce the underlying Agreement. Nevertheless, in December 2011, the plaintiff initiated proceedings in the dismissed case that resulted in a modification of the Agreement and a citation to discover assets. These rulings were entered without jurisdiction, as more than 30 days had passed since the dismissal order was entered. Although the Agreement provided for continuing jurisdiction in the Will County circuit court, it was not made a part of the record until after the trial court had lost jurisdiction. Furthermore, the dismissal order's reference to the Agreement was insufficient for the trial court to retain jurisdiction to enforce the Agreement. Therefore, we vacate the trial court's December 19, 2011,

order modifying the Agreement and April 12, 2011, order that granted the plaintiff leave to file a motion to turn over assets. Any action to enforce the terms of the Agreement must be brought in a new action.

¶ 19

CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Will County is vacated.

¶ 21 Vacated.